

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1073X

ALABAMA & FLORIDA RAILWAY CO., INC.—ABANDONMENT EXEMPTION—
IN GENEVA, COFFEE AND CONVINGTON COUNTIES, ALA.

Decided: February 5, 2015

Alabama & Florida Railway Co., Inc. (A&F) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 42.9-mile line of railroad between milepost 581.3 at Andalusia, Ala., and milepost 624.2 at Geneva, Ala. Notice of the exemption was served and published in the Federal Register on August 9, 2011 (76 Fed. Reg. 48,941). The exemption became effective on September 8, 2011.

By decision served on April 24, 2012, the proceeding was reopened and a notice of interim trail use or abandonment (NITU) was issued. A 180-day period was authorized for the Alabama Trails Commission (ATC) to negotiate an interim trail use/rail banking agreement with A&F and CSX Transportation, Inc. (CSXT)¹ for the right-of-way pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act).

By a series of subsequent decisions, the negotiating period under the NITU was extended several times.² Most recently, by decision served on September 15, 2014, the Board extended the negotiating period to December 11, 2014. The Board reminded ATC that it was to serve any further requests to extend the NITU negotiating period in this proceeding on both A&F and CSXT, as ATC had failed to serve the extension request at issue on A&F.

On December 18, 2014, ATC filed a request for an extension of the negotiating period for an additional 120 days “to continue negotiations with [CSXT].” By letter filed on December 19, 2014, A&F informed the Board that ATC had not served its extension request on A&F and requested that the Board strike ATC’s request as improperly filed.

¹ In its verified notice of exemption, A&F stated that it does not own title to the real property comprising the line’s right-of-way (ROW) but that the title remains with CSXT. According to A&F, when the line was sold in 1986 to an unaffiliated short line railroad predecessor of A&F (Alabama & Florida Railroad, Inc., or A&F Railroad), CSXT’s predecessor, Seaboard System Railroad, Inc., conveyed to A&F Railroad the common carrier obligation associated with the line but retained for itself an ownership interest in the underlying real estate and remained as a lessor of the line’s ROW. A&F stated that it acquired the line from A&F Railroad subject to this arrangement with CSXT.

² See decisions served on November 18, 2013, December 24, 2013, and May 6, 2014.

Once again, ATC is reminded that any NITU extension requests must be served on both CSXT and A&F. The Board orders ATC to serve its December 18 extension request on A&F and certify to the Board that it has done so by February 12, 2015. Should ATC fail to comply with this order, its extension request will be denied.

Where the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations for a portion of the line, the Board retains jurisdiction and the NITU negotiating period may be extended.³ See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Here, although ATC states that CSXT is “amenable to this extension and continued negotiations,” neither CSXT nor A&F has indicated to the Board directly whether it is willing to continue trail use negotiations. Therefore, CSXT and A&F are directed to reply to ATC’s December 18, 2014 extension request by February 19, 2015. If either CSXT or A&F does not consent to the extension request, the extension request will be denied.

Under 49 C.F.R. § 1152.29(e)(2), a rail carrier has 60 days from the date of satisfaction, expiration, or removal of the legal or regulatory barrier to consummation—here, the NITU negotiation period—in which to file a notice of consummation. To allow time for parties to comply with the Board’s orders described above, the deadline to file a notice of consummation will be postponed until further order of the Board.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. ATC shall serve its December 18, 2014 request to extend the NITU negotiating period on A&F and certify to the Board that it has done so by February 12, 2015.
2. CSXT and A&F shall reply to ATC’s December 18, 2014 extension request by February 19, 2015.
3. The deadline to file a notice of consummation under 49 C.F.R. § 1152.29(e)(2) is postponed until further order of the Board.
4. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

³ See Rail Abans.—Use of Rights-of-Way as Trails—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).